JUK DE SA v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Razak J.) January 18, 1975]
[Kuala Trengganu — Criminal Appeal No. 24 of 1974]

Criminal Law and Procedure — Operating fishing stakes and appliances — Pukat tunda — Forfeiture of vessel used in operation — Fisheries Act, 1963, ss. 3(a) and 15(1)(b).

The appellant had pleaded guilty to the charge of operating a *pukat tunda* with a boat. He was fined $300 or in default 2 months imprisonment and his vessel and nets were ordered to be forfeited. He appealed against the forfeiture of the boat.

Held, dismissing the appeal: (1) as the charge in this case was for operating a *pukat tunda* with a boat the subject matter of the offence must be deemed to embrace the vessel and therefore the vessel was properly forfeited;

(2) alternatively the vessel was used in the commission of the offence and therefore was caught within the second limb of section 15(1)(b) and therefore would be liable to forfeiture.

Case referred to:-

(1) *Public Prosecutor* v. *Lee Chin Chai* [1974] 2 M.L.J. 174, F.C.

CRIMINAL APPEAL.

Abdul Aziz Abdullah for the appellant.

Lamin bin Haji Yunus (Deputy Public Prosecutor) for the respondent.

Abdul Razak J.: This is an appeal against the decision of the learned magistrate given on November, 3, 1974 at Dungun, Trengganu.

The accused was charged as follows:—

"Bahawa kamu pada 29.9.74 lebih kurang jam 5.36 pagi, di laut Kuala Dungun, kawasan Pulau Tenggol, di dalam Daerah Dungun, di dalam Negeri Trengganu, telah didapati menangkap ikan dengan bot 'CHOK THAVORN' No. 70195 menggunakan *pukat tunda* tanpa lesen, yang demikian kamu telah melakukan suatu kesalahan di bawah peraturan 3(a) Fisheries (Maritime) (Amendment) Regulation 1967 — LN. 387/67. dan boleh dihukum di bawah seksyen 13(1) Akta Perikanan 8/63".

At the trial the accused pleaded guilty to the charge. He was fined $300 or in default 2 months imprisonment. His vessel and nets were ordered to be forfeited. He appeals against the forfeiture of the vessel.

Counsel for the appellant, Encik Abdul Aziz submits that the forfeiture under section 15(1) of the Act A152 can only be made if the vessel is as stated in sub-section (1)(b), "a subject matter of the offence". He maintains that the subject of the offence is not the vessel but the "pukat tunda" *i.e.* the nets. He argues that if it is intended to cover the vessel then the legislature would have been more explicit and he refers me to section 114 of the Customs Act 1967 and section 92(2) of the Road Traffic Ordinance 1958 as analogy. Reference is also made to *Public Prosecutor* v. *Lee Chin Chai*[1] stating that the words "the subject matter of an offence" therein is construed as not to include a vessel.

Encik Lamin, the Deputy Public Prosecutor, for the respondent on the other hand contends that one has to look at the charge to construe section 15. The subject matter of the charge, he says, is not only the net but also the vessel since it is an inalienable part of the use of the net. He distinguishes *Public Prosecutor* v. *Lee Chin Chai* saying that the regulation under which the accused is charged is 3(a) and *Lee Chin Chai* is a case under 3(b).

I agree with Encik Lamin that *Public Prosecutor* v. *Lee Chin Chai* must be distinguished from the present case, but for a slightly different reason. As stated by him *Lee Chin Chai* is a case under Regulation 3(b) whereas this case is one under 3(a).

Regulation 3(a) reads:

"No person shall operate, or permit or cause to be operated, any fishing stakes or appliances unless there is in force in respect of such stakes or appliances a licence or permit as the case may be granted under these Regulations."

The charge is for operating a "pukat tunda" with a boat. It speaks for itself that the "pukat" i.e. the net can only be operated by something pulling (tunda) it; hence the term 'pukat tunda'. And it is common knowledge that a "pukat tunda" is pulled by a steamer.

It merely means therefore that a boat is an inseparable part of the "pukat tunda" and an indispensable part of the latter's operation. That this is the way the legislature looks at it there can be no doubt. Let me illustrate. Under Regulation 4(2) it says that "an applicant for a licence in respect of any of the fishing appliances specified in the first column of the second schedule hereto shall ... deposit with the Fishery Officer the amount...." In the schedule in the first column under the heading "fishing appliances" is stated "Trawl nets used with inboard engine boats". And under this heading are specified the various types of inboard engine used with nets ranging from 10 H.P. to 60 H.P. The second column states the deposit payable for the corresponding boat and its H.P. in the first column. One will at once note that the sum payable is not related to any given net but to the boat and its engine which is hardly expected if it is urged that the boat is not a "fishing appliance" and an integral part of the net. It follows that unless from its context it is intended to be the contrary as in Regulation 3(b) which I shall deal within a little while it is quite evident what the term "fishing appliance" in Regulation 3(a) is intended to cover. The fact that the definition of "fishing appliance" is not exhaustive is merely corroborative of this supposition.

For the purpose of the first limb of section 15(1)(b) therefore "the subject matter of the offence" must, in my view, be deemed to embrace the vessel. And since it is clear that an offence has been committed within the meaning of section 15(1)(a)(i), then the vessel in this case had consequently been properly forfeited.

It is said that since *Lee Chin Chai* had defined what "fishing appliances" mean in Regulation 3(b) excluding therein a vessel, then a different construction cannot be attributed to 3(a). With respect, I cannot agree with that line of contention, the reason of which is self-explained in the regulation itself. Regulation 3(b) states: "No person shall have in his possession on board a vessel any fishing appliances or any part thereof unless there is in force in respect of such stakes or appliances a licence or permit as the case may be granted under these Regulations." One will observe the word "vessel" in 3(b) is an entity by itself a distinct from "fishing appliances". Clearly it indicates that within the context of that particular regulation the definition of "fishing appliances" is not intended to

include a vessel. On this basis alone the argument that a vessel is a subject matter of the offence under 3(b) cannot stand.

Alternatively, I think it could be said that the vessel was "used in the commission of the offence" and therefore caught within the second limb of section 15(1)(b) and therefore would still be liable to forfeiture. It speaks for itself that if it is said that the offence here is for using the "pukat tunda" (the net) merely then the boat must have been used for the commission of the offence since as stated earlier it is implicit in the word "pukat tunda" that the pukat is hauled by a vessel. There is however something said in *Lee Chin Chai* which seems to say that the words "in the commission of the offence" in section 15(1)(b) in view of the deletion of those words in section 14 and the repeal of the old section 16 relating to confiscation make those words meaningless in section 15(1)(b). It also seems to say that the words "used in the commission of the offence" are no longer a ground for seizure under section 14 which would render the thing liable to forfeiture. Whatever may be the real intention in *Lee Chin Chai* I must, with respect, say that it could not have been the intention of the legislature that a vessel can neither be the "subject matter of an offence" nor be "used in the commission of an offence" within the meaning of section 15(1)(b). The requirement for forfeiture under section 15 one may recall is that firstly an offence must have been committed within the meaning of sub-section 1(a)(i) or 1(a)(ii) and secondly the thing the subject of seizure must either be the subject matter of the offence or was used in the commission of the offence. We can quickly dismiss the requirement under section 15(1)(a) for reasons earlier stated. The controversy and doubt is in clause (b) not in clause (a). If it is said that a vessel cannot be the subject matter of an offence under Regulation 3(a) or (b) because the subject matter of the offence in both is fishing appliances which excludes a vessel then it must be assumed that it is intended by the legislature that it shall fall within the meaning of "used in the commission of the offence". On the other hand, if it is said that those words are meaningless and have no effect then it must be assumed that it is intended that it shall fall within the meaning of "the subject matter of the offence". But it surely cannot be said that a vessel cannot come within the ambit of either, because then the question may be asked how does a vessel which is properly seized under section 14 ever be forfeited. One may recall in section 14 the law allows a vessel to be seized and in sub-section (3) states that a thing liable to seizure is liable to forfeiture. Section 15 provides that where the conditions therein are satisfied the forfeiture of the thing seized under section 14 shall be mandatory. If it is said that under section 15 a vessel can never be the subject of forfeiture but can under section 14 be the subject of seizure merely then it is difficult to know why Parliament has provided that a vessel may be seized in the first instance. To say that it is not intended by Parliament to forfeit a vessel in any event is, without more, repudiating the express words of section 14 itself which provide that a vessel may be seized and shall be liable to forfeiture.

I therefore have no alternative but to dismiss the appeal.

Appeal dismissed.

Solicitors: *Abdul Aziz Abdullah & Co.*